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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91164764
Party	Plaintiff Brink's Network, Incorporated  Brink's Network, Incorporated 203 Bancroft Building3411 Silverside Road Wilmington, DE 19810 UNITED STATES
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Attachments	Stipulated Protective Order.pdf ( 11 pages )(372033 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

BRINK'S NETWORK, INCORPORATED	)	
	)	
Opposer	)	
	)	
v.	)	
	)	Opposition No. 91164764
THE BRINKMANN CORPORATION	)	
	)	
Applicant	)	

STIPULATED PROTECTIVE ORDER

Opposer Brink's Network, Incorporated and Applicant The Brinkmann Corporation, through their respective undersigned counsel, hereby stipulate, the Trademark Trial and Appeal Board consenting thereto, to the entry of the following Protective Order to maintain the confidential nature of certain documents, information or other materials which contain or relate to commercial, proprietary and/or trade secret information of a party or a non-party, and to ensure that such materials shall be used only for the purposes of this proceeding:

1. Classes of Protected Information

The Trademark Rules of Practice provide, in pertinent part, that all *inter partes* proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this Order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

- a. Confidential -- Material that is not accessible to the public.
- b. Highly Confidential -- Material that is not accessible to the public and

is subject to agreed restrictions on access by the parties.

- c. Trade Secret/Commercially Sensitive -- Material that is not accessible to the public, is subject to agreed restrictions on any access by the parties, and is accessible for review only by outside counsel for the parties and, subject to the provisions of ¶ 4 and 5 of this Order, by independent experts or consultants for the parties.

2. Information Not to Be Designated as Protected

Information may not be designated as subject to any form of protection under this Order if: (a) it is, or becomes, public knowledge as shown by publicly available writings, other than through violation of the terms of this Order; (b) it is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no contractual or other legally-enforceable obligation to the owner of the information to maintain such information in confidence; (c) it was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) it is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) it is disclosed by a non-designating party with the approval of the designating party.

3. Access to Protected Information

The provisions of this Order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and granted by the Board.

Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it

a condition of employment or obtain agreements from such individuals, in accordance with the provisions of ¶ 4 of this Order.

The following definitions shall apply to this Order:

- a. "Parties" are defined as the above-named Opposer and Applicant, including their respective officers, directors and management employees as well as their secretarial assistants.
- b. "Attorneys for the parties" are defined as including in-house counsel and outside counsel, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.
- c. "Independent experts" or "consultants" include individuals retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.
- d. "Non-party witnesses" include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness, who are not officers, employees or agents of a party.

Parties and their attorneys shall have access to information designated as confidential or highly confidential, subject to any agreed exceptions.

Outside counsel, but not in-house counsel, for a non-designating party shall have access to information designated as trade secret/commercially sensitive by a designating party.

Independent experts or consultants, non-party witnesses, and any other

individual not otherwise specifically covered by the terms of this Order may be afforded access to confidential or highly confidential information in accordance with the terms set forth in ¶ 4 below. Independent experts or consultants may have access to trade secret/commercially sensitive information if such access is agreed to by the parties or ordered by the Board, in accordance with the terms that follow in ¶¶ 4 and 5 below.

4. Disclosure to Any Individual

Prior to disclosure of protected information by any party or its attorney to any individual not already provided access to such information by the terms of this Order, the individual shall be informed of the existence of this Order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such certification is attached to this Order as Exhibit A. The party or attorney receiving the completed form shall retain the original.

5. Disclosure to Independent Experts or Consultants

In addition to meeting the requirements of ¶ 4, any party or attorney proposing to share disclosed information with an independent expert or consultant must also notify the party which designated the information as protected. Notification must be personally served or forwarded by certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the independent expert or independent consultant.

The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the independent expert or consultant. If objection is

made, then the parties must negotiate in a good faith effort to resolve the issue before raising it with the Board. If the parties are unable to resolve any such dispute, it shall be the obligation of the party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the parties have made to settle the dispute. The party objecting to disclosure will respond with its arguments against disclosure, or any such objections will be deemed waived.

6. Responses to Written Discovery

Responses to interrogatories under Federal Rule 33, depositions under Federal Rules 30, 31 or 45 and requests for admissions under Federal Rule 36, which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation prescribed in ¶ 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of such error, by informing all adverse parties, in writing, of the error. The parties may inform the Board only if protected information is not filed in accordance with the provisions of ¶ 12.

7. Production of Documents

If a party responds to requests for production under Rule 34 Fed. R. Civ. P. by making copies and forwarding the copies to the inquiring party, such copies shall be prominently stamped or marked, as necessary, with the appropriate designation prescribed by ¶ 1. If the responding party makes documents available for inspection and copying by the inquiring party, all such documents shall be considered protected during the course of inspection. After the inquiring party informs the responding party which documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation

prescribed by ¶ 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties may inform the Board only if protected information is not filed in accordance with the provisions of ¶ 12.

8. Depositions

Protected documents produced during or in connection with a discovery deposition or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document. In addition, all such documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested party shall note the protected nature of the information on the record of the deposition.

The transcript of any deposition and all exhibits or attachments shall be considered protected for thirty (30) days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments, that are to be treated as protected, by electing the appropriate designation prescribed in ¶ 1. Appropriate stampings or markings shall be made during this time. If no such designations are made, the entire transcript and exhibits will be considered unprotected.

9. Filing Notices of Reliance

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the

adverse party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

10. Briefs

When filing briefs, memoranda, or declarations in support of a motion, or briefs on the merits of the proceeding, the portions of these filings that discuss protected information, whether information of the filing party, or any adverse party, or any nonparty witness, shall be redacted. The rule of reasonableness for redaction is discussed in ¶ 12 of this Order.

11. Handling of Protected Information

Disclosure of information protected under the terms of this Order is intended only to facilitate the prosecution or defense of this proceeding. The recipient of any protected information disclosed in accordance with the terms of this Order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

All protected information shall be stored and maintained by counsel for the recipient in a manner that will prevent access to that information by unauthorized persons.

12. Redaction-Filing Material With the Board

When a party or attorney must file protected information with the Board or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness shall dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential



material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Similarly, when a multi-page document is in issue, reasonableness dictates that redaction of the portions or pages containing confidential material be effected when only some small number of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. Occasions when a whole document or brief must be submitted under seal should be very rare.

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

**CONFIDENTIAL**

**This envelope contains documents or information subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.**

13. Acceptance of Information; Inadvertent Disclosure

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as protected shall not constitute waiver of any right to

claim the information as protected upon discovery of the error.

14. Challenges to Designations of Information as Protected

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party must show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15. Board's Jurisdiction; Handling of Materials After Termination

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

The parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within thirty (30) days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like,

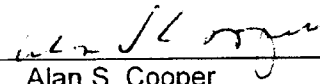
which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned.

16. Other Rights of the Parties and Attorneys

This Order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the Order preclude the filing of any motion with the Board for relief from a particular provision of this Order or for additional protections not provided by this Order.

BRINK'S NETWORK, INCORPORATED

Date: 5/3/06

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THE BRINKMANN CORPORATION

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## UNDERTAKING

Exhibit A to Stipulated Protective Order Relating to Discovery

STATE OF )  
 : ss  
COUNTY OF )

I, \_\_\_\_\_, being first duly sworn, state that:

1. My address is \_\_\_\_\_.
2. My present employer is \_\_\_\_\_ and  
the address of my present employer is \_\_\_\_\_.
3. My present occupation or job description is \_\_\_\_\_.
4. I have received a copy of the Stipulated Protective Order entered in  
Opposition No. 91164764, entitled *Brink's Network, Incorporated v. The Brinkmann  
Corporation* in the United States Patent and Trademark Office before the Trademark  
Trial and Appeal Board.
5. I have carefully read and understand the provisions of the Stipulated  
Protective Order, and I will comply with all of its provisions.
6. I submit to the jurisdiction of the Board for purposes of enforcement of  
the Stipulated Protective Order.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_ 2005.

[Seal]

Notary Public

My Commission expires: